

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
Hon. Kathleen Jansen, Presiding Judge

MICHIGAN ASSOCIATION OF HOME
BUILDERS; ASSOCIATED BUILDERS AND
CONTRACTORS OF MICHIGAN;
and MICHIGAN PLUMBING AND
MECHANICAL CONTRACTORS
ASSOCIATION, Michigan nonprofit
corporations,

Supreme Court No. 149150

Court of Appeals No. 313688

Lower Court No. 10-115620-CZ

149150-
Plaintiffs/Appellants,

v

CITY OF TROY,
a Michigan Home Rule City,

Defendant/Appellee.

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SUPPLEMENTAL AUTHORITY
TO APPLICATION FOR LEAVE TO APPEAL
ON BEHALF OF PLAINTIFFS/APPELLANTS

FILED

JUL 31 2014

LARRY S. ROYSTER
CLERK
MICHIGAN SUPREME COURT

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Cases

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| MCL 125.1508a | 2 |
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SUPPLEMENTAL AUTHORITY

On April 23, 2014, Plaintiffs/Appellants, Michigan Association of Home Builders; Associated Builders and Contractors of Michigan; and Michigan Plumbing and Mechanical Contractors Association (collectively, the "Builders") filed their Application for Leave to Appeal with this Court. Therein, the Builders argued that the decision of the Court of Appeals, that the Builders failed to exhaust their administrative remedies under the State Construction Code Act ("CCA"), must be reversed, in part, because there is no adequate remedy available to Appellants under the CCA. In addition to the reasons cited in their Application, the Builders advance the following basis for reversal.

The Builders claim that Defendant/Appellee, City of Troy (the "City") violated Section 22 of the CCA by depositing "User Fees" into the general fund. Section 22 of the CCA requires that fees be: (1) "reasonable;" (2) "bear a reasonable relation to the cost" of Building Department services; and (3) be used for "operation of" the Building Department only. MCL 125.1522(1).

The City claims that the Builders failed to exhaust the administrative remedies found at Section 9b of the CCA. The provisions of the CCA are set forth in the Builders' Application at pages 11-14. In relevant part, Section 9b states:

The director, as prescribed in this section, may conduct a performance evaluation of an enforcing agency to assure that the administration and enforcement of this act and the code is being done pursuant to either section 8a or 8b.

MCL 125.1509b. Noticeably absent from this purported administrative remedy provision of the CCA is any reference to, or incorporation of, Section 22 of the CCA. As a matter of statutory

interpretation, where no express reference of one statute to another is made, one should not be implied. *Alan v County of Wayne*, 388 Mich 210, 256-257; 200 NW2d 628 (1972). And, the plain and unambiguous language of a statute should be enforced as written; that is, Courts should not speculate about an unstated purpose for the statute where the unambiguous text plainly reflects the intent of the legislature. *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002).

Accordingly, Section 9b does not apply to Section 22 violations at all. Instead, according to its express language, Section 9b and its inadequate remedy only apply to alleged violations of Sections 8a and 8b. Therefore, the Builders correctly sought injunctive relief requiring the City to, among other things: establish a special revenue fund for building department fees; deposit the fiscal 2010-11 User Fee Surplus into that fund; deposit all department revenues into that fund thereafter; track revenue and expenditures as required by Section 22 of the CCA and Michigan's Uniform Budgeting and Accounting Act; and, if surpluses result, reduce future fees accordingly. The opinion of the Court of Appeals should be peremptorily reversed.

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July 31, 2014

VIA HAND DELIVERY

Clerk of the Court
Michigan Supreme Court
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Lansing, MI 48915

Re: *Michigan Association of Home Builders, et al v City of Troy*
Court of Appeals Docket No. 313688
Oakland County Circuit Court Case No. 10-115620-CZ

Dear Clerk:

Enclosed for filing is Supplemental Authority to Application for Leave to Appeal on
Behalf of Plaintiffs/Appellants with Proof of Service of same in the above-referenced matter.
Thank you.

Very truly yours,



Melissa A. Hagen

MAH/caj
Enclosures
cc w/encs: Lori Grigg Bluhm, Esq./Allan T. Motzny, Esq.
Mr. Bob Filka, CEO
Mr. Lee Schwartz
Cynthia H. Maher, CAE, Executive Director
Chris Fisher, President & CEO

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